

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 2, 2015

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN SENATE JUNE 15, 2015

AMENDED IN ASSEMBLY MAY 7, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 525

Introduced by Assembly Members Holden, Atkins, Dodd, and Wilk

February 23, 2015

An act to amend Sections 20020, 20021, 20036, and 20041 of, to amend the heading of Article 6 (commencing with Section 20035) of Chapter 5.5 of Division 8 of, to add Sections 20022, 20028, and 20029 to, and to repeal and add Section 20035 of, the Business and Professions Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

AB 525, as amended, Holden. Franchise relations: renewal and termination.

The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises between a franchisor, subfranchisor, and franchisee, as those terms are defined.

That act, except as otherwise provided, prohibits a franchisor from terminating a franchise prior to the expiration of its term, except for good cause, which includes, but is not limited to, the failure of the franchisee to comply with any lawful requirement of the franchise agreement after being given notice and a reasonable opportunity to cure the failure within 30 days.

This bill would instead limit good cause to the failure of the franchisee to substantially comply with the franchise agreement after being given notice at least 60 days in advance and would require that the period for a reasonable opportunity to cure the failure be no less than 60 days from the date of the notice of noncompliance. The bill would prohibit the period for curing the failure from exceeding 75 days, except as specified.

This bill would make it unlawful for a franchise agreement to prevent a franchisee from selling or transferring all or substantially all of the assets of the franchise business as defined, or a controlling or noncontrolling interest in the franchise ~~business~~ *business*, to another person, provided that the person is qualified under the franchisor's then-existing and reasonable standards for approval of new franchisees, as specified. The bill would prohibit a sale, transfer, or assignment if a franchise, or substantially all of the assets or a controlling or noncontrolling interest in the franchise business, without the franchisor's written ~~consent~~ *consent*, but would prohibit that consent from being withheld unless the buyer, transferee, or assignor does not meet standards for new franchisees.

This bill would require the franchisee, prior to the sale, assignment, or transfer of all or substantially all of the assets of the franchise business, as defined, or a controlling or noncontrolling interest in the franchise business, to another person, to notify the franchisor of the franchisee's intent to sell, transfer, or assign the franchise or its assets or interest, as specified, and would require the notice to be in writing and include specified information. The bill would require the franchisor, within a specified period, to notify the franchisee of the approval or disapproval of the sale, assignment, or transfer of the franchise, and would require the notice to be in writing and be ~~personally served on~~ *delivered by courier to* the franchisee or sent by receipted mail. The bill would deem a proposed sale, assignment, or transfer approved, unless disapproved by the franchisor, as specified.

The act requires a franchisor that terminates or fails to renew a franchise, other than in accordance with specified provisions of law, to

offer to repurchase from the franchisee the franchisee's resalable current inventory, as specified.

This bill *would repeal those provisions and* would, with certain exceptions, require the franchisor, upon a lawful termination or nonrenewal of a franchisee, to compensate the franchisee at the value of price ~~paid paid, minus depreciation of depreciation,~~ for all inventory, supplies, equipment, fixtures, and furnishings purchased ~~from the franchisor or paid for by the franchisee, under the franchise agreement,~~ as specified.

This bill ~~would, if a franchisor violates these provisions, require the finder of fact in awarding damages to reinstate the franchisee and pay specified damages or~~ *would prescribe specified remedies that may be elected by a franchisee if a franchisor terminates or fails to renew a franchise in violation of the act. The bill would entitle a franchisee to be reinstated under the same terms as the existing franchise agreement, in addition to an award for damages or, at the election request of the franchisee, or if reinstatement is impossible or impracticable, as determined by the trier of fact, would require the franchisor to pay the franchisee the fair market value of the franchise and franchise assets and any other damages, as provided. The bill would provide for injunctive relief in the event of a violation or threatened violation of these provisions. The*

The bill would limit its application to a franchise agreement entered into or renewed on or after January 1, 2016, or to franchises of an indefinite duration that may be terminated without cause.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20020 of the Business and Professions
2 Code is amended to read:
3 20020. Except as otherwise provided by this chapter, no
4 franchisor may terminate a franchise prior to the expiration of its
5 term, except for good cause. Good cause shall be limited to the
6 failure of the franchisee to substantially comply with the franchise
7 agreement after being given notice at least 60 days in advance of
8 the termination and a reasonable opportunity, which in no event
9 shall be less than 60 days from the date of the notice of
10 noncompliance, to cure the failure. The period to exercise the right

1 to cure shall not exceed 75 days unless there is a separate
2 agreement between the franchisor and franchisee to extend the
3 time.

4 SEC. 2. Section 20021 of the Business and Professions Code
5 is amended to read:

6 20021. If during the period in which the franchise is in effect,
7 there occurs any of the following events which is relevant to the
8 franchise, immediate notice of termination without an opportunity
9 to cure, shall be deemed reasonable:

10 (a) The franchisee or the business to which the franchise relates
11 has been the subject of an order for relief in bankruptcy, judicially
12 determined to be insolvent, all or a substantial part of the assets
13 thereof are assigned to or for the benefit of any creditor, or the
14 franchisee admits his or her inability to pay his or her debts as they
15 come due;

16 (b) The franchisee abandons the franchise by failing to operate
17 the business for five consecutive days during which the franchisee
18 is required to operate the business under the terms of the franchise,
19 or any shorter period after which it is not unreasonable under the
20 facts and circumstances for the franchisor to conclude that the
21 franchisee does not intend to continue to operate the franchise,
22 unless such failure to operate is due to fire, flood, earthquake, or
23 other similar causes beyond the franchisee's control;

24 (c) The franchisor and franchisee agree in writing to terminate
25 the franchise;

26 (d) The franchisee makes any material misrepresentations
27 relating to the acquisition of the franchise business or the franchisee
28 engages in conduct which reflects materially and unfavorably upon
29 the operation and reputation of the franchise business or system;

30 (e) The franchisee fails, for a period of 10 days after notification
31 of noncompliance, to comply with any federal, state, or local law
32 or regulation, including, but not limited to, all health, safety,
33 building, and labor laws or regulations applicable to the operation
34 of the franchise;

35 (f) The franchisee, after curing any failure in accordance with
36 Section 20020 engages in the same noncompliance whether or not
37 such noncompliance is corrected after notice;

38 (g) The franchisee repeatedly fails to comply with one or more
39 requirements of the franchise, whether or not corrected after notice;

1 (h) The franchised business or business premises of the franchise
2 are seized, taken over, or foreclosed by a government official in
3 the exercise of his or her duties, or seized, taken over, or foreclosed
4 by a creditor, lienholder, or lessor, provided that a final judgment
5 against the franchisee remains unsatisfied for 30 days (unless a
6 supersedeas or other appeal bond has been filed); or a levy of
7 execution has been made upon the license granted by the franchise
8 agreement or upon any property used in the franchised business,
9 and it is not discharged within five days of such levy;

10 (i) The franchisee is convicted of a felony or any other criminal
11 misconduct which is relevant to the operation of the franchise;

12 (j) The franchisee fails to pay any franchise fees or other
13 amounts due to the franchisor or its affiliate within five days after
14 receiving written notice that such fees are overdue; or

15 (k) The franchisor makes a reasonable determination that
16 continued operation of the franchise by the franchisee will result
17 in an imminent danger to public health or safety.

18 SEC. 3. Section 20022 is added to the Business and Professions
19 Code, to read:

20 20022. (a) Upon a lawful termination or nonrenewal of a
21 franchisee, the franchisor shall compensate the franchisee, at the
22 value of price ~~paid~~ *paid*, minus depreciation, ~~of~~ *for* all inventory,
23 supplies, equipment, fixtures, and furnishings purchased or paid
24 ~~for by the franchisee from the franchisor or its approved suppliers~~
25 ~~and sources~~ under the terms of the franchise agreement or any
26 ancillary or collateral ~~agreement, and, agreement by the franchisee~~
27 ~~to the franchisor or its approved suppliers and sources, that,~~ at
28 the time of the notice of termination or nonrenewal, are in
29 possession of the franchisee or used in the franchise business.

30 (b) This section shall not require the franchisor to purchase any
31 personalized items, inventory, supplies, equipment, fixtures, or
32 furnishings not reasonably required to conduct the operation of
33 the franchise business in accordance with the franchise agreement
34 or any ancillary or collateral agreement.

35 (c) This section shall not apply when the franchisee declines a
36 bona fide offer of renewal from the franchisor.

37 (d) This section shall not apply if the franchisee retains control
38 of the principal place of the franchise business.

39 (e) This section shall not apply to any termination or nonrenewal
40 of a ~~franchisee franchise~~ due to a publicly announced and

1 nondiscriminatory decision by the franchisor to completely
2 withdraw from all franchise activity within the relevant geographic
3 market area in which the franchise is located. For the purpose of
4 this section “relevant geographic market area” shall have the same
5 meaning as in Section 20999.

6 (f) This section shall not apply to any inventory, supplies,
7 equipment, fixtures, or furnishings that are sold by the franchisee
8 between the date of the notice of termination or nonrenewal, and
9 the cessation of operation of the franchise business, by the
10 franchisee, pursuant to the termination or nonrenewal.

11 (g) Upon the termination of a ~~franchisee~~, *franchise*, a franchisor
12 may offset against amounts owed to a franchisee under this section
13 any amounts owed by such franchisee to the franchisor.

14 SEC. 4. Section 20028 is added to the Business and Professions
15 Code, to read:

16 20028. (a) It is unlawful for a franchisor to prevent a franchisee
17 from selling or transferring all or substantially all of the assets of
18 the franchise business, or a controlling or noncontrolling interest
19 in the franchise business, to another person provided that the person
20 is qualified under the franchisor’s then-existing and reasonable
21 standards, as consistently applied to similarly situated franchisees
22 operating within the franchise brand, for the approval of new or
23 renewing franchisees.

24 (b) Notwithstanding subdivision (a), a franchisee shall not have
25 the right to sell, transfer, or assign the franchise or substantially
26 all of the assets of the franchise business, or a controlling or
27 noncontrolling interest in the franchise business, without the written
28 consent of the franchisor, except that the consent shall not be
29 withheld unless the buyer, transferee, or assignor does not meet
30 the standards for new or renewing franchisees described in
31 subdivision (a).

32 (c) Nothing in this section shall prohibit a franchisor from
33 exercising the contractual right of first refusal to purchase a
34 franchise after receipt of a bona fide offer to purchase the franchise
35 by a proposed purchaser of the franchise. A franchisor exercising
36 the contractual right of first refusal shall offer the franchisee
37 payment at least equal to the value offered in the bona fide offer.

38 (d) For the purpose of this section “franchise business” shall
39 include a legal entity that is a party to a franchise agreement.

SEC. 5. Section 20029 is added to the Business and Professions Code, to read:

20029. (a) The franchisee shall, prior to the sale, assignment, or transfer of all or substantially all of the assets of the franchise business, or a controlling or noncontrolling interest in the franchise business, to another person, notify the franchisor, of the franchisee's intent to sell, transfer, or assign the franchise or substantially all of the assets of the franchise business, or a controlling or noncontrolling interest in the franchise business. The notice shall be in writing, delivered to the franchisor by business courier or by receipted mail and include all of the following:

(1) The proposed transferee's name and address.

(2) A copy of all agreements related to the sale, assignment, or transfer of the franchised business or its assets.

(3) The proposed transferee's application for approval to become the successor franchisee. The application shall include all forms, financial disclosures, and related information generally utilized by the franchisor in reviewing prospective new franchisees, if those forms are readily made available to the existing franchisee. If the forms are not readily available, the franchisee shall request and the franchisor shall deliver the forms to the franchisee by business courier or receipted mail within 15 calendar days. As soon as practicable after the receipt of the proposed transferee's application, the franchisor shall notify, in writing, the franchisee and the proposed transferee of any additional information or documentation necessary to complete the transfer application.

(b) (1) The franchisor shall, within 60 days after the receipt of all of the necessary information and documentation required pursuant to subdivision (a), or as specified by written agreement between the franchisor and the franchisee, notify the franchisee of the approval or disapproval of the *proposed* sale, assignment, or transfer of the franchise. The notice shall be in writing and shall be delivered to the ~~franchisor~~ franchisee by business courier or ~~receipted mail within 15 calendar days.~~ *mail*. A proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of

1 disapproval a statement setting forth the reasons for the
2 disapproval.

3 (2) In any action in which the franchisor's disapproval of a sale,
4 assignment, or transfer pursuant to this subdivision is an issue, the
5 reasonableness of the franchisor's decision shall be a question of
6 fact requiring consideration of all existing circumstances. For
7 purposes of this paragraph, the finder of fact may be an arbitrator
8 specified in the franchise agreement and who satisfies the
9 requirements of Section 20040. Nothing in this paragraph shall
10 prohibit summary judgment when the reasonableness of transfer
11 approval or disapproval can be decided as a matter of law.

12 (3) Nothing in this subdivision requires a franchisor to exercise
13 a contractual right of first refusal.

14 (c) Nothing in this section shall prohibit a franchisor from
15 exercising the contractual right of first refusal to purchase a
16 franchise after receipt of a bona fide offer to purchase the franchise
17 by a proposed purchaser of the franchise. Any franchisor exercising
18 the contractual right of first refusal shall offer the franchisee
19 payment at least equal to the value offered in the bona fide offer.

20 (d) For the purpose of this section "franchise business" shall
21 include a legal entity that is a party to a franchise agreement.

22 SEC. 6. The heading of Article 6 (commencing with Section
23 20035) of Chapter 5.5 of Division 8 of the Business and Professions
24 Code is amended to read:

25
26 Article 6. Remedies
27

28 SEC. 7. Section 20035 of the Business and Professions Code
29 is repealed.

30 SEC. 8. Section 20035 is added to the Business and Professions
31 Code, to read:

32 20035. (a) In the event a franchisor terminates or fails to renew
33 a franchisee, in violation of this chapter, the franchisee shall be
34 entitled to either of the following remedies:

35 (1) Reinstatement of the franchisee under the same terms as the
36 existing franchise agreement, and the franchisor shall pay all
37 damages caused to the franchisee from the violation.

38 (2) Upon request of the franchisee, or if the relief in paragraph
39 (1) is determined by the finder of fact to be impossible or
40 impracticable, then the franchisor shall pay the franchisee the fair

1 market value of the franchise and franchise assets and any other
2 damages caused by the violation of this chapter.

3 (b) A court may grant preliminary and permanent injunctions
4 for a violation or threatened violation of this chapter.

5 SEC. 9. Section 20036 of the Business and Professions Code
6 is amended to read:

7 20036. The franchisor may offset against any remedies made
8 pursuant to Section 20035 any prior recovery by the franchisee
9 pursuant to Section 20022 and any sums owed the franchisor or
10 its subsidiaries by the franchisee pursuant to the franchise or any
11 ancillary agreement.

12 SEC. 10. Section 20041 of the Business and Professions Code
13 is amended to read:

14 20041. (a) Except as provided in subdivision (b), the provisions
15 of this chapter shall apply only to franchises granted or renewed
16 on or after January 1, 1981, or to franchises of an indefinite
17 duration that may be terminated by the franchisee or franchisor
18 without cause.

19 (b) The amendments to this chapter made by the act adding this
20 subdivision shall apply only to franchise agreements entered into
21 or renewed on or after January 1, 2016, or to franchises of an
22 indefinite duration that may be terminated by the franchisee or
23 franchisor without cause.